was effected after the act. *Standard Oil Co.* v. *United States*, 221 U. S. 1, 31 Sup. Ct. 502. But the principal case goes farther, for nothing but the continuing of a monopoly already acquired is alleged within the statutory period. It has several times been held that conspiracy to restrain trade is a continuing offense under the act. *United States* v. *Kissell*, 218 U. S. 601, 31 Sup. Ct. 124; *United States* v. *Swift*, 186 Fed. 1002. See 24 HARV. L. REV. 505. Likewise contracts in restraint of trade are not saved by virtue of having been entered into before the act was passed. *United States* v. *Trans-Missouri Freight Association*, 166 U. S. 290, 17 Sup. Ct. 540. It is true that the mere continuance of the result of a crime does not continue the crime. *United States* v. *Irvine*, 98 U. S. 450. But the Sherman Act condemns "monopolizing," and seems therefore to make illegal the mere continuance of a monopoly illegally acquired. The act was aimed not more at the unfair acts in themselves than at the condition of stifled competition in which they result. The view of the principal case finds support in the language of several cases. See *United States* v. *MacAndrews & Forbes Co.*, 149 Fed. 823, 830; *Standard Oil Co.* v. *United States*, *supra*, 58–62, 77.

SPECIFIC PERFORMANCE — OPTION TO PURCHASE — ENFORCEMENT AGAINST AN INTERVENING PURCHASER WITH NOTICE. — A vendor of land in consideration of one dollar gave the plaintiff an option to purchase the land for a specified price at any time during the next thirty days. During this period the defendant purchased the land with notice of this option. The plaintiff exercised his option in due time and brought a bill for specific performance against the defendant and the vendor. The defendant demurred. *Held*, that the demurrer should be overruled. *Horgan* v. *Russell*, 140 N. W. 99 (N. D.). See NOTES, p. 747.

SURETYSHIP — SURETY'S DEFENSES: OMISSIONS OF CREDITOR — BANK'S FAILURE TO APPLY DEPOSIT OF DEBTOR ON ITS CLAIM AGAINST HIM. — The maker of a note after its maturity had general deposits with the bank holding the note sufficient to cover the debt, but afterwards withdrew them. *Held*, the surety is not released. *National Bank of Commerce* v. *Gilvin*, 152 S. W. 652 (Tex., Ct. Civ. App.).

The bank had the undoubted right to apply the deposit to discharge the debt. *Bank* v. *Brewing Co.*, 50 Oh. St. 151; *Clark* v. *Northampton Bank*, 160 Mass. 26, 35 N. E. 108. Any release by the creditor of securities though acquired subsequent to the debt releases the surety to the value of the security. *Baker* v. *Briggs*, 8 Pick. (Mass.) 122; *Rogers* v. *School Trustees*, 46 Ill. 428. If this is solely because the surety loses his right of subrogation against the security, it has no application in the principal case where there is no security. *National Mahaiwe Bank* v. *Peck*, 127 Mass. 298. For the bank has no lien on the deposits. Thus it cannot hold the deposit if the note is not due. *Merchants' National Bank* v. *Robinson*, 97 Ky. 552; *Columbia National Bank* v. *German National Bank*, 56 Neb. 803, 77 N. W. 346. If there were a lien, though the deposits were insufficient to cover the debt, their payment would discharge the surety *pro tanto*. *Wharton* v. *Duncan*, 83 Pa. St. 40; *Cummings* v. *Little*, 45 Me. 183. But such is not the law. *People's Bank* v. *Legrand*, 103 Pa. St. 309; *Bacon's Administrators* v. *Bacon's Trustees*, 94 Va. 686, 27 S. E. 576. But the creditor's duty to the surety is more than mere refraining from interference with his right to subrogation. Thus he must register documents if necessary to protect the security. *State Bank* v. *Bartle*, 114 Mo. 276, 21 S. W. 816. He must notify the surety in certain cases. 1 BRANDT, SURETYSHIP, 3 ed., c. viii. He must accept a tender by the debtor. *Curiac* v. *Packard*, 29 Cal. 194; *Spurgeon* v. *Smitha*, 114 Ind. 453, 17 N. E. 105. But he owes no duty to accept burdensome security. *Fuller* v. *Tomlinson Brothers*, 58 Ia. 111,

12 N. W. 127. Nor to prosecute his claim against the estate of a deceased debtor within the short period allowed. *Sibley* v. *McAllaster*, 8 N. H. 389; *Villars* v. *Palmer*, 67 Ill. 204. *Contra*, *Bridges* v. *Blake*, 106 Ind. 332, 6 N. E. 833. Nor to prevent a judgment lien from expiring. *Kindt's Appeal*, 102 Pa. St. 441. Nor to prove against the estate in bankruptcy or insolvency. *Clopton* v. *Spratt*, 52 Miss. 251; *Schott* v. *Youree*, 142 Ill. 233, 31 N. E. 591. See 20 HARV. L. REV. 502. Nor to sue the debtor though requested by the surety. *Hickok* v. *Farmers' & Mechanics' Bank*, 35 Vt. 476; *Harris* v. *Newell*, 42 Wis. 687. *Contra*, *Pain* v. *Packard*, 13 Johns. (N. Y.) 174. An affirmative duty, then, is imposed when slight action by the creditor will greatly benefit the surety. In the principal case, only a transfer in the bank's books is required, and it seems that the duty should be imposed. *Pursifull* v. *Pineville Banking Co.*, 97 Ky. 154, 30 S. W. 203; *Commercial National Bank* v. *Henninger*, 105 Pa. St. 496. The weight of authority, however, holds the opposite result necessary to preserve the fluidity of bank deposits by protecting the bank in paying any check covered by a deposit. *Davenport* v. *State Banking Co.*, 127 Mass. 298. *National Mahaiwe Bank* v. *Peck*, 126 Ga. 136, 54 S. E. 977. There seems no reason for distinguishing between deposits at and those after the debt's maturity, but this has been done in one state. *People's Bank* v. *Legrand*, *supra*; *Commercial National Bank* v. *Henninger*, 105 Pa. St. 496.

TORTS — INTERFERENCE WITH BUSINESS — EFFECT OF WRONGFUL MOTIVE IN SALE OF LAND. — A landowner erected a large sign on her land bearing the words, "For Sale. Best Offer from Colored Family." An advertisement similarly worded was published in a daily newspaper. Although intending to sell, the defendant was actuated by ill-will toward the plaintiffs, and by the threatened sale was seriously interfering with their real-estate business. The plaintiffs filed a bill in equity to enjoin the defendant from continuing the advertisement and the sign. *Held*, that no injunction should be granted. *Holbrook* v. *Morrison*, 100 N. E. 1111 (Mass.). See NOTES, p. 740.

TROVER AND CONVERSION — DAMAGES — RIGHT TO RETURN CONVERTED PROPERTY IN MITIGATION OF DAMAGES. — The defendant in recovering two rafts that had gone adrift, by mistake took a raft belonging to the plaintiff. Upon being notified, the defendant left the raft at the plaintiff's landing. The plaintiff sued for conversion. *Held*, that he may recover the full value of the raft. *MacKenzie* v. *The Scotia Lumber Co.*, 12 East. L. R. 120 (Nova Scotia).

In general, an action of trover may lie, even though the defendant acted under a mistake or intended to benefit the owner. *Hollins* v. *Fowler*, L. R. 7 H. L. 757; *Hiort* v. *Bott*, L. R. 9 Ex. 86. The damages are ordinarily the full value of the chattel. This rule, though somewhat harsh, seems justified by the greater security afforded personal property by relieving the owner of the hardship of receiving a partially spoiled chattel, with purely conjectural damages. By the weight of authority in the United States, the measure of damages is the same even where, as in the principal case, the defendant is able and willing to put the plaintiff *in statu quo*. *Carpenter* v. *Manhattan Life Ins. Co.*, 22 Hun (N. Y.) 47; *Carpenter* v. *Dresser*, 72 Me. 377. Where the plaintiff has suffered nothing by the conversion, it is hard to see what useful purpose is served by allowing him to force a sale on the defendant. Property rights are not thereby made more secure and nominal damages would serve to adjudicate the plaintiff's right. See *Sutton* v. *Great Northern R. Co.*, 99 Minn. 376, 378, 109 N. W. 815, 816. The courts should have power to order such a plaintiff to mitigate damages. *Hiort* v. *London & Northwestern R. Co.*, L. R. 4 Ex. D. 188; *Rutland & Washington R. Co.* v. *Bank of Middlebury*, 32 Vt. 639; *Bigelow Co.* v. *Heintze*, 53 N. J. L. 69, 21 Atl. 109; *Warder* v. *Baldwin*, 51 Wis. 450, 8 N. W. 257.